

N.D.A.G. Letter to Goter (May 5, 1986)

May 5, 1986

Mr. Wayne D. Goter
Assistant State's Attorney
Morton County State's Attorney's Office
210 2nd Avenue N.W.
P.O. Box 190
Mandan, ND 58554

Dear Mr. Goter:

Thank you for your letter of March 14, 1986, concerning 1985 legislation authorizing a tax for the provision of an emergency service communications system. Your questions can be essentially reduced to an inquiry as to whether the tax authorized by this law may be imposed throughout a county despite the fact that all persons within the county are not able to make use of the emergency service communications system due to the unavailability of the appropriate equipment.

N.D.C.C. Ch. 57-40.6 authorizes the governing body of a county or city to impose an excise tax on the use of telephone access lines for the purpose of funding an emergency service communications system. N.D.C.C. §57-40.6-02(4) specifically prohibits the imposition of such an excise tax where equipment necessary to establish such a system "is not available from a telephone company serving the county or city and would prove to be economically infeasible to install. . . ." The specific language used by the Legislature in these statutes speak of a county or city rather than portions thereof. The inescapable conclusion is that the tax authorized by this section for the funding of an emergency service communications system in a city or county is available only if such a system operates throughout the entire city or county. Where the appropriate equipment may not be established throughout the entire county or city due to its unavailability or its costs, N.D.C.C. §57-40.6-02(4) prohibits the imposition of the excise tax.

Therefore, the only conclusion that may be reached based upon the clear language of the statutes involved is that in a situation where the equipment necessary for an emergency service communications system is not available throughout a county, the excise tax authorized by N.D.C.C. Ch. 57-40.6 may not be imposed.

You also asked who determines the economic feasibility of the installation of an emergency service communications system and how is such determination to be made. These matters are not answered directly by the statutes involved in N.D.C.C. Ch. 57-40.6. However, the authority to impose an excise tax lies with the governing body of a county or city. Thus, there is the assumption that the governing bodies of the city and county are the appropriate entities to make such a determination and to decide the manner in which such a determination is to be made.

Sincerely,
Nicholas J. Spaeth

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